IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.436 OF 2006

Mr. Deepak S/o. Kamal Mukut ... Appellant

Vs.

The Special Recovery Officer & Anr. ... Respondents

Mr. A.M. Saraogi for the appellant.

Mr. A.R. Pande for respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATED : 13TH JULY, 2006.

P.C.:-

1. Heard counsel for the parties.

2. Preliminary point was raised on behalf of respondent No.2 that the suit instituted by the appellant/plaintiff is nothing but an abuse of process of law. In fact, it amounts to trying to overreach the order passed by the Division Bench of this court in the writ petition filed by the appellant himself. In Writ Petition No.7241 of 2003, the appellant had asked for same reliefs, which are now pressed in the present suit. The said writ petition was dismissed by making the following observations :

> "In view of the fact that the petitioner can challenge the fact of attachment of his flat on the ground that the petitioner is the factual owner before the Recovery Officer, this petition is dismissed, reserving that right to the petitioner.
>
> 2. Parties to act on the authenticated copy of this order."

3. It is not in dispute that the appellant accepted this order and allowed the same to become final. Instead of taking recourse to appropriate remedy before the Recovery Officer, which he is supposed to take, the appellant has filed a suit before the Bombay City Civil Court being S.C. Suit (Stamp) No.3081 of 2004. It is contended on behalf of respondent No.2 that the appellant has compounded the mischief by making misleading and false statements in paragraph 1 of the plaint, which reads thus :

> "The Plaintiff states that prior to filing of the present Suit, the Plaintiff had preferred to file a Writ Petition before the Hon'ble High Court, Mumbai, challenging the validity of the action on the part of the Defendants in which, after granting initial stay, the Hon'ble High Court have been pleased to observe that it amounts to a disputed question of facts and hence writ cannot be maintainable and in view thereof, the Plaintiff is filing the present suit before this Hon'ble Court."

4. According to respondent No.2, in view of the settled legal position, the suit filed by the appellant ought to be thrown out summarily due to his conduct. Indeed, the above argument advanced on behalf of respondent No.2 - Society is a formidable point raised. However, whether it is a case of abuse of process of law or contempt of court, it is a matter which will have to

be resolved in appropriate proceedings if resorted to by the respondents. That course is left open. For the present, I am concerned with the correctness of the view taken by the trial court in the impugned judgment. The trial court framed two issues for consideration which reads thus :

> "1) Whether the dispute in the suit is covered under section 91 of the MCS Act and therefore this Court has no jurisdiction ?
>
> 2) Whether the claim in the suit is beyond the pecuniary jurisdiction of this court?"

5. Both these issues are answered against the appellant. I have no hesitation in upholding the opinion expressed by the trial court that the proceedings instituted by the appellant is nothing but as a person claiming through the member of the Society and the Society is a party to the proceedings coupled with the nature of controversy involved regarding the claim of maintenance amount, the subject matter was squarely governed by section 91 of the Maharashtra Co-operative Societies Act. In that view of the matter, the jurisdiction of the civil court was clearly excluded. This opinion of the trial court is unexceptional having regard to the frame of the suit and the fact situation of the present case. Once this finding is accepted, it is not necessary for this court to examine the correctness of the second issue regarding pecuniary jurisdiction answered by the trial court. Accordingly, this appeal is dismissed with costs quantified at Rs.7500/- to be paid to respondent No.2 Society by the appellant within one week from today as

condition precedent.

6. At this stage, counsel for the appellant prays that the appellant be granted two weeks' time to present the plaint before the appropriate forum or to take appropriate proceedings as may be advised. There is no difficulty in accepting this request of the appellant. It will be open to the appellant to take recourse to the proceedings which will have to be entertained on its own merits subject to payment of costs as abovementioned.

[A.M. KHANWILKAR, J.]